

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

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|---------------------------------|---|---------------------------|
| Darrell Allen Findley, |) | Case No. 1:23-cv-1915-RMG |
| |) | |
| Plaintiff, |) | |
| |) | ORDER AND OPINION |
| v. |) | |
| |) | |
| Bryan P Stirling, <i>et al.</i> |) | |
| |) | |
| Defendants. |) | |
| |) | |

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge (Dkt. No. 15) recommending that the Court dismiss Plaintiff’s complaint without further leave to amend and without service of process. Also before the Court is Plaintiff’s “motion to change venue.” (Dkt. No. 17).¹ For the reasons set forth below, the Court adopts the R&R as the order of the Court, dismisses Plaintiff’s complaint without leave to amend and without issuance and service of process, and denies Plaintiff’s motion to change venue.

I. Background and Relevant Facts

Plaintiff, a pretrial detainee proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights by Defendants. Amended Complaint, (Dkt. No. 9 at 3). Plaintiff alleges that, at various times in 2018, he sustained injuries while in jail, namely a cut wrist, ruptured capillaries, irrevocable mental damage, memory loss, and amnesia. (*Id.* at 5).

¹ Said motion is devoid of any legal argument related to a “change of venue.” (Dkt. No. 17 at 1). Rather, in his “motion,” Plaintiff enumerates injuries he allegedly sustained at the hands of Defendants. (“6 prisons 6 month a month’s long hunger strike a cut wrist this is a cult”) (errors in original). Accordingly, the motion to “change venue” is denied.

On June 20, 2023, the Magistrate Judge issued an R&R recommending the amended complaint be dismissed without leave to amend and without issuance and service of process. (Dkt. No. 15). Plaintiff did not file objections to the R&R.

II. Legal Standards

a. Pro Se Pleadings

This Court liberally construes complaints filed by *pro se* litigants to allow the development of a potentially meritorious case. *See Cruz v. Beto*, 405 U.S. 319 (1972); *Haines v. Kerner*, 404 U.S. 519 (1972). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleadings to allege facts which set forth a viable federal claim, nor can the Court assume the existence of a genuine issue of material fact where none exists. *See Weller v. Dep’t of Social Services*, 901 F.2d 387 (4th Cir. 1990).

b. Magistrate Judge’s Report and Recommendation

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). Because Plaintiff did not file objections to the R&R, the Court reviews the R&R for clear error.

III. Discussion

The Court finds that the Magistrate Judge ably addressed the issues and correctly concluded that Plaintiff's amended complaint should be dismissed without further leave to amend and without service of process as it fails to state a plausible claim for relief. (Dkt. No. 15 at 4-5) (noting, inter alia, that Plaintiff provides "no factual allegations to support" his complaint); Fed. R. Civ. P. 8(a).

IV. Conclusion

For the reasons set forth above, the Court **ADOPTS** the R&R (Dkt. No. 15) as the order of Court, **DISMISSES** Plaintiff's complaint **WITHOUT LEAVE TO AMEND AND WITHOUT ISSUANCE AND SERVICE OF PROCESS**, and **DENIES** Plaintiff's motion to change venue (Dkt. No. 17).

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
United States District Judge

July 17, 2023
Charleston, South Carolina